

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH JOHN RHULE,

Defendant.

CASE NO. CR20-105 JCC

**OPPOSITION TO MOTION FOR  
REVIEW OF DETENTION  
ORDER**

**I. INTRODUCTION**

The Defendant, KENNETH JOHN RHULE, has been charged with an offense carrying a mandatory minimum sentence of ten years' imprisonment. He is also simultaneously facing the loss of his wife, who has been ordered by immigration authorities to self-deport to Russia, with no lawful path to return to the United States. Confronted with these dire circumstances, the Defendant has already made his choice—a choice to flee, to avoid incarceration, to avoid marital separation, to return to Russia with his spouse.

The Defendant made this choice in May 2020, during a recorded phone call while his wife was held at the Northwest Detention Center. In May 2020, the Defendant knew that he would be charged with a drug trafficking offense. Two months earlier, law enforcement searched the Defendant's property, finding a functioning marijuana processing laboratory,

1 almost 1,000 kilograms of bulk marijuana, and drug paraphernalia on the premises. On May  
2 4, 2020, the Defendant learned the consequences of that search—law enforcement met him  
3 as he landed his airplane in Snohomish County, served him with a warrant to search the  
4 aircraft, and informed him that he was a target of their investigation.

5 Faced with this mounting pressure, and what could rationally be seen as an inevitable  
6 arrest, on May 7, 2020, the Defendant told his wife he would flee with her to Russia. As the  
7 Defendant explained, he had already applied for an expedited passport, he would seek a  
8 Russian visa to travel, and, once she was deported, he would join her in Russia. The  
9 Defendant made this choice knowing not only that he had a compelling motive to flee—to  
10 avoid lengthy incarceration and separation from his wife—but also that he had the means to  
11 flee. The Defendant has long been honing his ability to hide from law enforcement—using  
12 shell companies to conceal his assets; opening financial and online accounts using alternative  
13 names, addresses, and telephone numbers; concealing his identity using Tor browsers,  
14 encrypted applications, and the darkweb; and amassing substantial cryptocurrency assets.  
15 Fortunately, the Defendant was arrested before he could put his plan in motion—before his  
16 wife was deported, before he obtained his passport.

17 Recognizing that a presumption of detention applied, given the severity of the  
18 Defendant’s charges, Magistrate Judge Tsuchida appropriately decided that there were no  
19 conditions or combination of conditions that would reasonably assure the Defendant’s  
20 appearance at trial or the safety of the community. Five weeks after this detention order was  
21 issued, the Defendant filed this appeal, offering essentially the same argument presented to  
22 Judge Tsuchida. For the same reasons, the Defendant’s motion should be denied—he has  
23 failed to rebut the presumption of detention, posing both a flight risk and danger to the  
24 community, and should be ordered detained pending trial.

## 25 **II. APPLICABLE LAW**

26 The Bail Reform Act of 1984 permits pretrial detention of a defendant where “no  
27 conditions or combination of conditions will reasonably assure the appearance of the person  
28 as required . . . .” 18 U.S.C. § 3142(e). A presumption arises that no condition will

1 reasonably assure the person's appearance "if the judicial officer finds that there is probable  
2 cause to believe that the person committed an offense for which a maximum term of  
3 imprisonment of ten years or more is prescribed in the . . . Controlled Substances Import and  
4 Export Act." 18 U.S.C. § 3142(e)(3)(A).

5 The defendant may proffer contrary evidence to rebut the presumption of detention,  
6 but the presumption remains as an "evidentiary finding militating against release, to be  
7 weighed along with other evidence relevant to factors in § 3142(g)." *United States v. Hir*,  
8 517 F.3d 1081, 1086 (9th Cir. 2008). The factors in § 3142(g) include: (1) the nature and  
9 circumstances of the offense charged; (2) the weight of the evidence against the defendant;  
10 (3) the history and characteristics of the person, including his character, physical and mental  
11 condition, employment, financial resources, length of residence in the community,  
12 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and  
13 record concerning appearance at court proceedings; and (4) nature and seriousness of danger  
14 posed by release. *See* 18 U.S.C. § 3142(g)(1)-(4); *United States v. Winsor*, 785 F.2d 755,  
15 757 (9th Cir. 1986); *United States v. Motamedi*, 767 F.2d 1403, 1407 (9th Cir. 1985). The  
16 presumption in favor of detention, as well as the § 3142(g) factors, demonstrate that the  
17 Defendant should remain detained.

## 18 II. BACKGROUND

19 The Defendant was arrested on July 14, 2020, while disembarking a flight at the  
20 Honolulu airport. The Defendant had flown from Washington to Hawaii, carrying with him  
21 a small duffel bag of clothing, a drone, and \$10,000 in cash.<sup>1</sup> For the two weeks prior  
22 arriving in Hawaii, law enforcement had been communicating with the Defendant, under the  
23 guise of returning various pieces of property, in order to arrest him on an outstanding  
24 warrant. Perhaps suspecting he would be arrested, rather than meeting with law  
25 enforcement, the Defendant sent his son's girlfriend to collect his property. With her in his  
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28 <sup>1</sup> The Defendant's son, Connor Rhule, was residing in Hawaii at the time.

1 place, the Defendant traveled to Superior, Montana, where he remained until he traversed  
2 through Washington on his way to Hawaii.<sup>2</sup>

3 After arriving in Hawaii, the Defendant was arrested and held in the Federal  
4 Detention Center in Honolulu. In light of the Marshals' limited flight schedule due to  
5 COVID-19, the United States made alternative arrangements to expeditiously transport the  
6 Defendant to Washington. Specifically, the government arranged to have the Defendant  
7 escorted by law enforcement from the Honolulu prison, placed on a commercial flight to  
8 Washington, collected by law enforcement from the SeaTac airport, and brought to the  
9 courthouse for an initial appearance. On July 24, 2020, Magistrate Judge Tsuchida ordered  
10 the Defendant detained pending trial.

#### 11 IV. ARGUMENT

##### 12 A. The Defendant has a Compelling Motive to Flee

13 The Defendant faces not only a lengthy prison sentence but also the certain separation  
14 from his wife, either of which would be sufficient to compel the Defendant to flee rather than  
15 appear at trial.

##### 16 a. The Defendant Faces a Mandatory Minimum Prison Sentence of Ten 17 Years

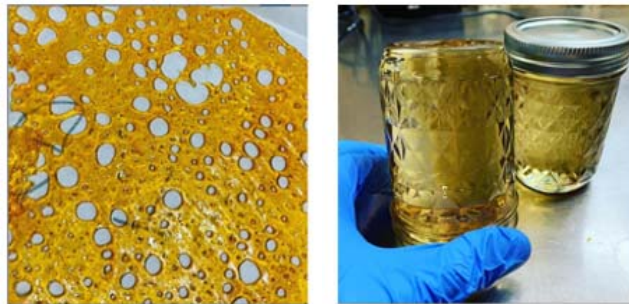
18 From 2014 through 2020, the Defendant, along with his son, KENNETH WARREN  
19 RHULE, manufactured and distributed marijuana and marijuana distillates, ultimately  
20 earning more than \$13.5 million in income. For this conduct, the Defendant has been  
21 charged by Indictment with Conspiring to Manufacture and Distribute Marijuana and  
22 Marijuana Distillates, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846. If found guilty of  
23 this offense, the Defendant faces a mandatory minimum sentence of ten years'  
24 imprisonment. Facing the daunting prospect of serving a decade in prison, the Defendant has  
25 a strong incentive to flee to avoid prosecution. As described herein, the weight of the  
26 evidence favors conviction in this case.

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28 <sup>2</sup> This information was obtained pursuant to a tracker warrant.

**i. Law Enforcement Found Substantial Evidence Implicating the Defendant when they Searched the Monroe Compound and the Defendant's Residence on March 10, 2020**

On March 10, 2020, law enforcement searched several properties owned by the Defendant and KENNETH WARREN RHULE, including a property located in Monroe, Washington, where the Defendant and his co-conspirators manufactured and distributed marijuana products. As described in the complaint, the Defendant and his co-conspirators set up a laboratory on this property, designed to produce marijuana extracts. In this lab, the Defendant used chemicals and solvents—including combustible butane and propane, carbon dioxide, and dry ice—to extract THC from marijuana plants and create concentrated marijuana products. These products were sold in the form of gels, liquids, and solid crystalline substances, included those commonly referred to as “clear” and “shatter,” shown in the images below.



On March 10, 2020, in a warehouse located on the property, law enforcement found a fully-functioning extraction lab, including following laboratory equipment, along with an employee who was in the midst of conducting an extraction:<sup>3</sup>

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<sup>3</sup> RHULE\_00329701.

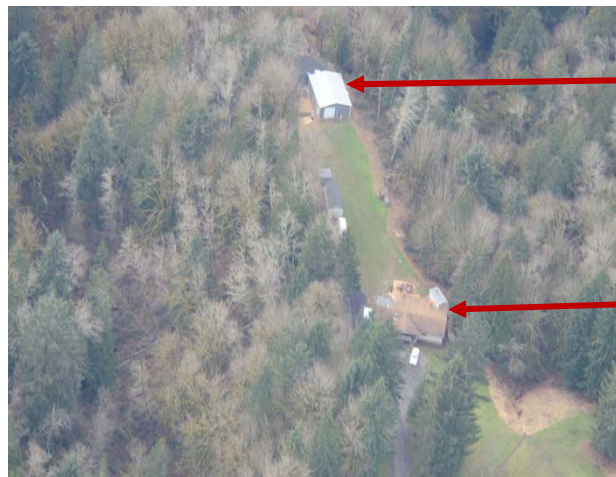




In that warehouse, law enforcement also found dozens of trash bags filled with more than 900 kilograms of bulk marijuana.



At the time of the search, the Defendant was living in a residence located on the Monroe property, in close proximity to this laboratory:



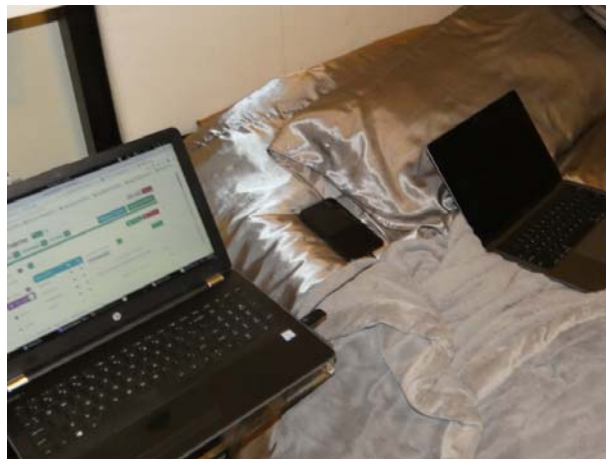
Laboratory

Defendant's  
Residence

1 Upon entering the Defendant's residence, law enforcement determined that the home was  
2 used to sell and ship the marijuana products manufactured in the lab. For example, on a desk  
3 in the Defendant's bedroom, agents found marijuana products stored in individual jars, next  
4 to a drug ledger, packing labels, and USPS shipping boxes.<sup>4</sup>



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12 Agents found additional packages, sealed and ready to ship, containing marijuana products  
13 and affixed with shipping labels bearing fake sender names and fake sender addresses. Next  
14 to the Defendant's bed, law enforcement found a laptop, open to a darkweb vendor page,  
15 advertising the sale of marijuana products.<sup>5</sup>



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24 Inside the residence, law enforcement also located multiple firearms, including two stolen  
25 weapons, and over \$300,000 worth of cryptocurrency.

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28 <sup>4</sup> RHULE\_00331838.

<sup>5</sup> RHULE\_00331836.

1 The evidence gathered on March 10, 2020, alone would be sufficient to convict the  
 2 Defendant of the charged offense, which carries with it a ten year mandatory minimum term  
 3 of imprisonment. Faced with this substantial evidence, the Defendant has a strong motive to  
 4 flee rather than face conviction and lengthy incarceration.

5 **ii. Law Enforcement Found Substantial Additional Evidence**  
 6 **Implicating the Defendant During the Course of their**  
 7 **Investigation**

8 In addition to the evidence gathered on the Monroe property, during the course of its  
 9 investigation, law enforcement has also obtained electronic evidence proving that the  
 10 Defendant conspired to manufacture and distribute marijuana products.

11 Specifically, law enforcement determined that the Defendant and his co-conspirators  
 12 sold their marijuana products under the label HerbinArtisans. HerbinArtisans held a Google  
 13 Enterprise account, which the Defendant accessed using the email address  
 14 ken@herbinartisans.com. In this account, law enforcement found emails sent by the  
 15 Defendant describing his marijuana operations. For example, the Defendant sent the  
 16 following email to his son, KENNETH WARREN RHULE, on January 10, 2016, creating a  
 17 protocol for extracting marijuana products.<sup>6</sup>

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28 <sup>6</sup> RHULE\_00256445.



## worksheet extraction

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**From:** Jon Kuhn <ken@herbinartisans.com>  
**To:** Kenneth Rhule <kenny@herbinartisans.com>  
**Date:** Sun, 10 Jan 2016 19:13:58 -0800  
**Attachments:** extractionworksheetdraft.rtf (3.1 kB)

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Kenny,

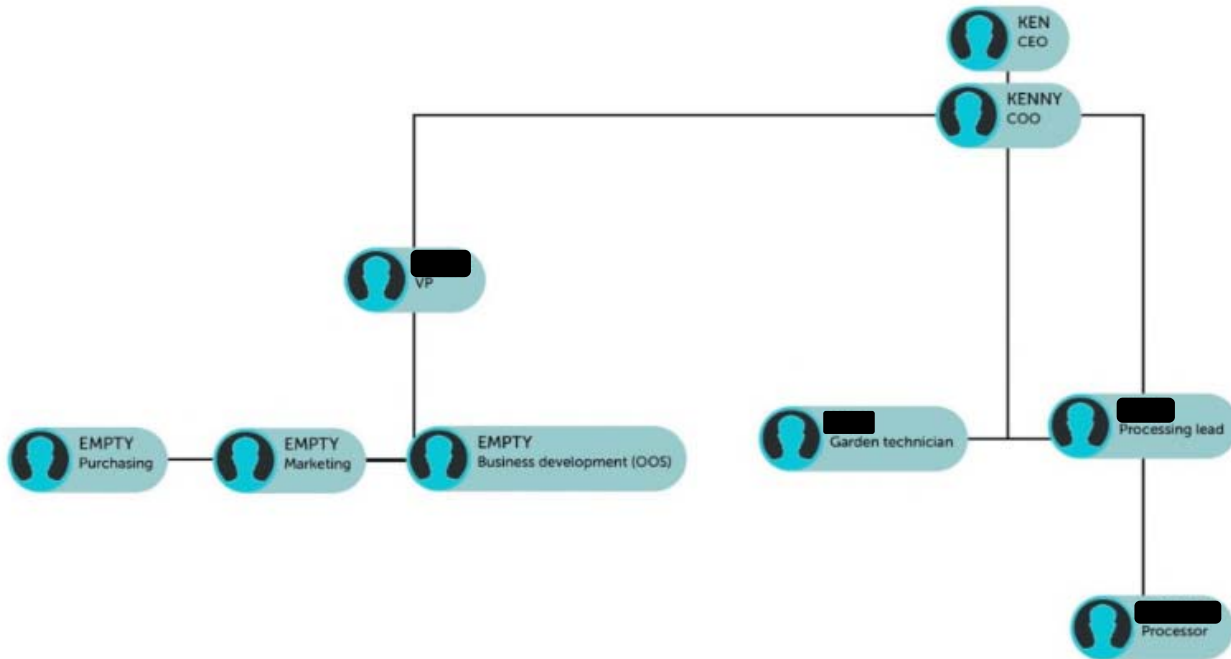
I quickly drafted a very basic extraction worksheet. This is a 1 page document that needs to follow the extraction process from the very beginning to the end. Its designed to place accountability on each the extract technician, and the purge technician. Additionally, its a document that will hang by clip on the column, to the stainless table, to the oven and act as a quick visual to each batch (with all the info we need). Take a look, I am sure it can be more robust, but this is just to get us going. We need this in place Monday morning. Feel free to enhance it if....

Print out 50-100 of these at the shop and we need to make sure everyone uses them..

Agents also located the following self-drafted organizational chart,<sup>7</sup> found on KENNETH WARREN RHULE's laptop and the HerbinArtisans Google account, showing that the Defendant served as the CEO of this operation, overseeing multiple employees.

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<sup>7</sup> RHULE\_00020633. This chart was saved in a Google Photos folder for kenny@herbinartisans.com titled "2016-01-18." Based on the individuals identified in the chart, it is believed to represent the organizational structure for HerbinArtisans.



Additionally, on KENNETH WARREN RHULE's laptop, agents located text messages exchanged between the Defendant and KENNETH WARREN RHULE outlining, among other things, the Defendant's ambitions for his marijuana operations:

Defendant: This op at the warehouse is 95% done. It's setup to generate 2535lbs per room every 60 days (which is 2535 lbs once per month out of alternating rooms) that is \$5070k per month, plus the trim that it yields. That, along with supplemental oil to keep the system running is another 2535k per month. That can be run smoothly with just [C and M2] (or 2 employees ). That's roughly 100k per month in revenue with costs of less that 18k per month... That leaves uswith 80k per month for you and I. When the construction is finished, that output becomes a walk in the park. As the employees get familiar with the systems, they dial them in further and can do it in their sleep. It doesn't need to be stessful. It doesn't need [M], end user sales, etc. Simply moving volume wholesale to a small handful of people. After the setup is done, this whole thing can operate with A couple of people, it really won't be that involved. It's time consuming because it involved construction and learning the industry. Both of those variables are nearly complete now.<sup>8</sup>

<sup>8</sup> RHULE\_00338456 (March 30, 2015).

1 Finally, in order to track HerbinArtisans' income and expenses, the Defendant and his  
 2 co-conspirators used the cloud-based accounting software, Xero. Using this program, the  
 3 Defendant tracked HerbinArtisans' sale of marijuana products, purchase of bulk marijuana  
 4 from growers, and employee expenses. In the Xero records, the Defendant is described as  
 5 the subscriber on the account, which he routinely logged into, including as recently as  
 6 December 2019.<sup>9</sup> In sum, the electronic evidence gathered in this case, coupled with the  
 7 items found during the search of the Defendant's property, weigh in favor of conviction.  
 8 Faced with this evidence, and the prospect of serving a lengthy prison sentence, the  
 9 Defendant has a compelling motive to flee.

10 **iii. On May 4, 2020, Law Enforcement Informed the Defendant**  
 11 **that he was a Target of the Investigation**

12 Less than two months after law enforcement searched the Defendant's home, locating  
 13 substantial evidence implicating the Defendant in the conspiracy to manufacture and  
 14 distribute marijuana products, officers informed the Defendant that he was a target of their  
 15 investigation. On May 4, 2020, law enforcement met the Defendant at the Harvey Airfield in  
 16 Snohomish, Washington.<sup>10</sup> On that date, agents served a warrant to search the Defendant's  
 17 Cessna airplane. At the time the agents arrived, the Defendant was flying in the aircraft with  
 18 his son, Connor Rhule. When the plane landed, it was searched and, after a drug detection  
 19 dog alerted to a locked rear compartment in the tail of the aircraft, the plane was seized.

20 During the search, the Defendant approached law enforcement and explained that the  
 21 aircraft was jointly owned by him and Connor Rhule, a statement that Connor Rhule denied.  
 22 Agents then advised the Defendant to stop flying over the Northwest Detention Center,  
 23 where Olga Rhule was held, since his low flights were causing the Center to go into  
 24 lockdown. Before departing, an agent explained to the Defendant that "it was likely he  
 25 would be receiving a target letter, as [the Defendant] did have a connection to the  
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27 \_\_\_\_\_  
 28 <sup>9</sup> RHULE\_00331038.

<sup>10</sup> Exhibit 1 (RHULE\_00331038).

1 investigation of his son KENNETH W. RHULE.”<sup>11</sup> As a result, the Defendant was  
 2 expressly told that he was under investigation and was a target in the case.

3 After being advised that he was a target of the investigation, the Defendant didn’t  
 4 appear shocked or express surprise. And this makes sense. Based on the substantial amount  
 5 of evidence taken from the Defendant property, residence, and bedroom on March 10, 2020,  
 6 and the agent’s seizure of his airplane on May 4, 2020, any reasonable person would  
 7 conclude that they were under investigation for manufacturing and distributing marijuana.  
 8 Accordingly, as of May 4, 2020, the Defendant could no longer deny he was under  
 9 investigation, he knew that a target letter was imminent, and, based on the evidence gathered  
 10 against him, his arrest was nearly inevitable.

#### 11 **b. The Defendant Also Faces Certain Separation from His Wife of 19 Years**

12 In addition to his desire avoid arrest and lengthy incarceration, the Defendant also has  
 13 a second compelling reason to flee the jurisdiction, his desire to avoid separating from his  
 14 wife of nineteen years, who has been ordered to return to Russia. On March 10, 2020, law  
 15 enforcement arrested the Defendant’s wife, Olga Rhule, for immigration-related violations.  
 16 Although Olga Rhule immigrated from Russia on a fiancé visa, she did not marry her  
 17 betrothed, instead remaining in the United States without status. Although she ultimately  
 18 married the Defendant, as a visa overstay, Olga Rhule was unable to adjust her status and has  
 19 no lawful basis to remain in the United States.

20 In May 2020, Olga Rhule was detained at the Northwest Detention Center awaiting  
 21 deportation. Facing his wife’s impending removal from the United States, and fearful he  
 22 would be arrested, the Defendant began making arrangements to flee to Russia. The  
 23 Defendant applied for an expedited passport, prepared to obtain a Russian visa to travel, and  
 24 began preparing to live in Russia for an extended period of time. The Defendant called his  
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28 <sup>11</sup> *Id.* at p. 7.

1 wife and informed her of these plans on May 7, 2020—a mere three days after law  
2 enforcement informed him of his target status and seized his airplane—stating:<sup>12</sup>

3 Olga Rhule: First of all let me ask you this. I'm not getting out any time  
4 soon right?

5 Defendant: I don't think so.

6 Olga Rhule: How much time.. approximately?

7  
8 Defendant: I don't know if there is a time limit that you're going to get  
9 out. **I think we may have to have you go back to Russia,**  
**and me meet you there.**

10 Olga Rhule: Well if that happens how much time?

11  
12 Defendant: He couldn't answer that question because of COVID. But it  
13 sounds like your hearing is on the 28th.

14 Olga Rhule: 29th.

15 Defendant: 29th. Is it the 29th? I thought it was the 28th. So you can  
16 basically, um... At the hearing you're gonna, you're gonna  
17 basically say you're not gonna challenge it any more, you  
18 know and you want to go just proceed with the deportation.

19 Olga Rhule: Can it not happen sooner?

20 Defendant: He said from there—He said he didn't think so but I'll push  
21 that issue more but . . . I'll see if—He'll have to do another  
22 one of these requests to move the hearing up kind of thing  
23 and they'll have to grant it or not.

24 Olga Rhule: Can you try?

25 Defendant: Yes I can try. Of course. Um.. But here's the thing, even with  
26 that, **it's gonna take me about that long to get my passport**  
**and visa and stuff like that situated so I'm working on**  
27 **that now to get that expedited.**

28 <sup>12</sup> Exhibit 2 at 1:25-4:08 (RHULE\_00340777) (emphasis added).



Olga Rhule: OK.

Defendant: I was gonna go down this afternoon and get my pictures real quick so I can mail off the passport document and I'm gonna do it instead of normal, **I'm gonna do it urgent, you know the urgent time frame and pay the extra money.**

Olga Rhule: OK.

Defendant: And then I got to apply for the visa, you know the visa over there... There's some other things I'm working on, but I can't talk to you about them.<sup>13</sup>

Olga Rhule: I understand.

Defendant: You know what I'm talking about right?

Olga Rhule: I think I maybe-

Defendant: It's what you think.

Olga Rhule: OK.

Defendant: So I'm working on all that stuff right now. OK?

Olga Rhule: OK.

Defendant: And um yeah, **I'll be with you no matter what.**

Olga Rhule: Promise?

Defendant: **Yes. Of course I promise... Of course I promise.**

The United States has confirmed that the Defendant did, in fact, apply for an expedited passport, intent on leaving for Russia. Had the Defendant's passport arrived, and had Olga

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<sup>13</sup> Given the amount of cryptocurrency owned by the Defendant, discussed below, the United States believes that this reference could have described moving funds so that the Defendant and his wife could live comfortably in Russia.

1 Rhule been deported, the United States believes that the Defendant would have fled to  
2 Russia.

3 Since this conversation occurred, Olga Rhule was released from immigration custody  
4 on bond and has been ordered to leave the United States by October 5, 2020. Rather than  
5 mitigate the Defendant's risk of flight, his wife's release has made the situation more dire.  
6 Olga Rhule now has a final order from the immigration judge requiring her to voluntarily  
7 leave the United States and return to Russia within the next month and a half.<sup>14</sup> In light of  
8 this order, the Defendant is faced with two choices: (1) remain in the United States, appear at  
9 trial, serve a substantial jail sentence, and leave his wife to return to Russia alone; or (2) flee  
10 with his wife and hide in the United States, Russia, or any other country, and avoid  
11 separation and a prison term. Not surprisingly, as the Defendant stated during that recorded  
12 phone conversation, he had already chosen to flee.

13 **i. Olga Rhule Will Not be Permitted to Return to the United States**

14 According to the Defendant, now that Olga Rhule has been permitted to voluntarily  
15 depart for Russia, rather forcibly deported, she will be able to imminently return to the  
16 United States. However, the Defendant neglects to mention that Olga Rhule faces two  
17 barriers to returning to the United States: (1) having overstayed her fiancé visa, she is barred  
18 from returning to country for a period of ten years; and (2) as a prior drug user with a  
19 conviction for solicitation of heroin, she is permanently barred from reentering the country.  
20 While there is a chance that Olga Rhule might obtain a discretionary waiver for overstaying  
21 her visa,<sup>15</sup> prior drug use cannot be waived.

22 Specifically, once she returns to Russia, when completing the immigrant visa  
23 application (form DS-260), Olga Rhule will be asked the following question: "Have you ever  
24

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25  
26 <sup>14</sup> This deadline may be extended due to COVID but statutorily may not be extended more than 120 days (or until  
27 February 2, 2021).

28 <sup>15</sup> The Defendant admits that waiver of the first barrier—overstaying her visa—is fully discretionary and is not  
guaranteed. The Defendant agrees that, even if she were granted a waiver, Olga Rhule would have to remain in Russia  
while awaiting this discretionary decision.

1 | violated, or engaged in a conspiracy to violate, any law related to controlled substances?”

2 | Based on her prior drug conviction,<sup>16</sup> Olga Rhule will be required to answer in the  
3 | affirmative. Section 212(a)(2)(A)(II) of the Immigration and Nationality Act provides:

4 |       Except as provided in clause (ii), any alien convicted of, or who admits having  
5 |       committed, or who admits committing acts which constitute the essential  
6 |       elements of— (II) a violation of (or a conspiracy or attempt to violate) any law  
7 |       or regulation of a State, the United States, or a foreign country relating to a  
8 |       controlled substance (as defined in section 802 of title 21), . . . is inadmissible.

9 | Olga Rhule will be deemed permanently inadmissible based on her prior drug use, described  
10 | in her conviction. She may also be deemed permanently inadmissible based on  
11 | uncharged drug use, manufacture, or sale, including the type of drug trafficking described in  
12 | the complaint.<sup>17</sup> Once deemed inadmissible, there is no waiver that Olga Rhule could obtain  
13 | to enter the United States—rather, prior drug possession and use is a complete bar to  
14 | returning.

15 |       Under similar circumstances, the petitioner in *Pazcoguin v. Radcliffe*, 292 F.3d 1209  
16 | (9th Cir. 2001), was denied admission to the United States. In *Pazcoguin*, a Philippine  
17 | national arrived at the Honolulu International Airport and applied to enter the country. In his  
18 | immigrant visa application, the petitioner admitted to previously smoking marijuana in  
19 | violation of law. Having learned of this drug use, an Immigration Judge found the petitioner  
20 | excludable from the United States under INA § 212(a)(2)(A)(i)(II). The Ninth Circuit  
21 | affirmed this finding, determining that the petitioner was excludable despite the fact that he  
22 | his absence would pose a hardship for the petitioner’s mother, who was a United States  
23 | citizen. *Id.* at 1218-19.

24 |       As with the petitioner in *Pazcoguin*, Olga Rhule’s prior heroin use would prevent her  
25 | from returning the United States. Absent an available mechanism to immigrate, the only

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26 | <sup>16</sup> This conviction is appended as Exhibit 3 (under seal).

27 | <sup>17</sup> This form also poses the question “Are you the spouse, son, or daughter of an individual who has violated any  
28 | controlled substance trafficking law, and have knowingly benefitted from the trafficking activities in the past five  
years?” It’s also noteworthy that Olga Rhule shared the bedroom (where the marijuana products, drug ledger, and laptop  
open to the darkweb were found) with the Defendant.

1 way for the Defendant to maintain his nineteen year relationship with his wife would be to  
 2 flee together.

3 **ii. The Denial of the Defendant's Passport Application Does not**  
 4 **Eliminate his Flight Risk**

5 On August 7, 2020, the State Department denied the Defendant's passport application,  
 6 informing him he was ineligible for a travel document because of an ongoing tax dispute  
 7 with the Internal Revenue Service and his "seriously delinquent tax debt." Dkt. 48, Ex. A at  
 8 146. Absent a passport, the Defendant claims he is incapable of fleeing the jurisdiction.  
 9 However, as the Court knows, individuals enter and exit the United States on a near daily  
 10 basis without lawful passports. The United States land border is extensive, human smugglers  
 11 are prevalent, and fraudulent passports can be readily purchased. Additionally, now that the  
 12 Defendant's wife has been released from immigration custody, the Defendant is no longer  
 13 required to return to Russia. Instead, the two could flee virtually anywhere in the world—  
 14 Mexico, Canada, an alternative city in the United States. Once reunited out of custody, the  
 15 two could travel to any preferred location to avoid prosecution and separation. The  
 16 Defendant has already shown a willingness to break the law. Traveling without a passport,  
 17 or obtaining a fraudulent passport, would be far a less serious charge than the charge the  
 18 Defendant is already facing.

19 It is also worth noting that, when asked by the Probation Officer in Hawaii, the  
 20 Defendant did not report that he had applied for his passport and expected to receive one on  
 21 an expedited basis. Instead, he stated that he his passport was missing and did not know its  
 22 current whereabouts. Ultimately, the Probation Officer only learned that the Defendant had  
 23 applied for an expedited passport when she interviewed the Defendant's son, Connor Rhule,  
 24 who reported that the Defendant had recently submitted a passport application.

25 Facing the prospect of a substantial jail sentence, separation from his wife, and her  
 26 exclusion from the United States, the Defendant may reasonably conclude that he would be  
 27 better served fleeing prosecution. The Defendant has already taken substantial steps towards  
 28 fleeing—applying for an expedited passport, preparing to obtain a Russian visa, and planning

1 to meet his wife in Russia. The Defendant took these steps knowing that he was under  
 2 investigation, knowing that substantial evidence establishing his guilt had been uncovered,  
 3 and knowing that he could reunite with his wife in Russia where he would not face  
 4 extradition. Since the Defendant initially made the decision to flee, his situation has only  
 5 gotten worse. The Defendant is now aware that he has been charged with an offense that  
 6 carries a ten year mandatory minimum prison sentence. The Defendant has now served over  
 7 a month in custody and does not want to remain incarcerated. The Defendant now knows  
 8 that, by court order, his wife must voluntarily depart the United States. The Defendant made  
 9 his intentions clear during that May 7, 2020 phone call, and the events that have occurred  
 10 since that date have only made his motives to flee more compelling.

11 **B. The Defendant has the Means to Flee Prosecution**

12 The Defendant not only has a compelling motive to flee prosecution—to avoid a  
 13 lengthy prison sentence and separation from his spouse—he also has the means to evade law  
 14 enforcement detection. The Defendant has long been honing his ability to hide from law  
 15 enforcement—using shell companies to conceal his assets; opening financial and online  
 16 accounts using alternative names, addresses, and telephone numbers; concealing his identity  
 17 using Tor browsers, encrypted applications, and the darkweb; and amassing substantial  
 18 cryptocurrency assets.

19 **a. The Defendant Has Used Aliases, Fake Social Security Numbers,**  
 20 **Alternative Addresses, and Fake Telephone Numbers to Hide His Identity**

21 While committing the charged offense, the Defendant has proven adept at using  
 22 alternative names, social security numbers, addresses, or telephone numbers when  
 23 purchasing property, applying for cryptocurrency accounts, and communicating online.

24 **i. The Defendant Uses Aliases to Hide His Identity**

25 When opening corporations and online accounts, the Defendant has used the aliases  
 26 “John Kuhn” and “Jon Kuhn.” For example, “John Kuhn” is the subscriber listed on the  
 27 Defendant’s intellivisioninc@gmail.com account, while “Jon Kuhn” is the subscriber listed  
 28 on the Defendant’s ken@herbinartisans.com account. On January 10, 2016, the Defendant



1 sent the following email to his son, KENNETH WARREN RHULE, noting the alias and  
 2 indicating that he may have logged into the email address using a “stealth account.”<sup>18</sup>

3 **RE: worksheet extraction**

4  
 5 **From:** Jon Kuhn <ken@herbinartisans.com>  
 6 **To:** Kenneth Rhule <kenny@herbinartisans.com>  
 7 **Date:** Sun, 10 Jan 2016 19:48:39 -0800

8 My name is stuck as john juhn on this... not sure how that happened, I may have been logged into a  
 9 stealth account when I first logged on. I cant change my name, are you able to?

10 The Defendant also used the alias “John Kuhn” when incorporating RKK Associates,  
 11 a shell company that the Defendant used to register his vehicles, including a van used to  
 12 transport marijuana products. In February 2016, the Defendant used this alias when  
 13 communicating with Harvard Business Services, which incorporated RKK Associates,  
 14 including by sending the following email:<sup>19</sup>

15 **From:** John Kuhn [mailto:intellivisioninc@gmail.com]  
 16 **Sent:** Sunday, February 21, 2016 8:13 PM  
 17 **To:** Harvard Filings Team [REDACTED]  
 18 **Subject:** Re: RKK Associates LLC 5966611

19 Hi,

20 When should We expect to receive the EIN information that we had you file?

21 John

22 Similarly, the Defendant has also opened financial accounts using the alias “John  
 23 Ruhl,” or variations thereof. For example, the Defendant opened cryptocurrency accounts at  
 24 Coinbase using the names “John K Rhule,” “John Rhule,” and “John Ruhl.”<sup>20</sup> The  
 25 Defendant also opened Neteller and PayPal accounts in the name “John Ruhl.”<sup>21</sup>

26  
 27 <sup>18</sup> RHULE\_00256449.

<sup>19</sup> RHULE\_00325257.

<sup>20</sup> RHULE\_00328579-81, 00002970.

<sup>21</sup> RHULE\_00334253, 00334261, 00334302 (Neteller accounts allow users to send and receive money online).

**ii. The Defendant Avoids Associating Accounts with his Social Security Number**

In addition to employing aliases, the Defendant has used a fake social security number to avoid associating his financial accounts with his true identity. For example, the Defendant opened an account at Coinbase, an online cryptocurrency wallet provider, in the name of “Kenneth Rhule,” listing a social security number not associated with him.<sup>22</sup> This practice is consistent with the advice the Defendant offered KENNETH WARREN RHULE regarding the need to use credit cards that are not tied to their names and identifiers. On November 4, 2015, the Defendant sent KENNETH WARREN RHULE a photograph of a credit card, stating:

This one is tied to my name and SSN, so it’s more of a short term deal... But we could load a million dollars on to this card and I can justify to the irs that it was from the cash sale of assets acquired on taxes I had already paid and that I had no capital gain in selling the “stuff”... So they can f[\*]ck themselves...<sup>23</sup>

Similarly, in May 2015, KENNETH WARREN RHULE advised the Defendant that he had two bank accounts and “didn’t think either ha[d] [his] correct social.”<sup>24</sup>

**iii. The Defendant Uses Mailing Addresses that are Not Tied to his Home**

To further conceal his identity, the Defendant has also avoided having his online accounts and assets registered to his home address, instead listing postal boxes, his parents’ home, or seemingly random locations as his mailing addresses.<sup>25</sup>

For example, the Defendant has used a postal box held at Pony Mailbox & Business Center in Woodinville, Washington, to register his vehicles,<sup>26</sup> receive shipments mailed to

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<sup>22</sup> RHULE\_00002975.

<sup>23</sup> RHULE\_00338056. The Hawaii PSR also noted that the social security number the Defendant provided to the Probation Officer was not associated with him. It’s unclear which social security number this report is referencing.

<sup>24</sup> RHULE\_00338056. The United States has confirmed that KENNETH WARREN RHULE uses a fake social security number when opening financial accounts.

<sup>25</sup> Notably, the Defendant does have mail and packages delivered to his home address, so the use of alternative mailing address is not due to insufficient mail service.

<sup>26</sup> RHULE\_00022294.

1 his shell company—RKK Associates,<sup>27</sup> and register one of his aircrafts—owned by the shell  
 2 company Frontline Aviators LLC.<sup>28</sup> Additionally, the Defendant used a second postal box,  
 3 held at a mail forwarding service in Grandville, Michigan, to incorporate RKK Associates.<sup>29</sup>

4 The Defendant also uses his parents' address in Nevada, including to register a  
 5 Gemini cryptocurrency account,<sup>30</sup> register for a credit card,<sup>31</sup> and pay taxes on the  
 6 Defendant's property in Monroe, Washington—owned by the shell company Frontline  
 7 LLC.<sup>32</sup> The Defendant has also used seemingly random addresses to register for additional  
 8 cryptocurrency accounts,<sup>33</sup> and to serve as return addresses when mailing packages  
 9 containing marijuana products to customers.<sup>34</sup>

#### 10 **iv. The Defendant Uses Google Voice Numbers When Opening** 11 **Accounts**

12 Moreover, the Defendant uses Voice Over Internet Protocol (“VOIP”) numbers, rather  
 13 than his personal cell phone, to register payment accounts and incorporate shell companies.  
 14 For example, the Defendant used Google Voice numbers to register a cryptocurrency  
 15 account at Coinbase in the name of “John K. Rhule,” communicate with Stripe—an online  
 16 payment processor—regarding his account, serve as contact information for RKK  
 17 Associates, and text message KENNETH WARREN RHULE regarding their marijuana  
 18 manufacturing and distribution operation.<sup>35</sup>

19 By using these diffuse strategies—false names, false social security numbers, false  
 20 addresses, false telephone numbers—the Defendant avoided law enforcement detection, and  
 21 the closure of his accounts by financial institutions, for a considerable length of time. The  
 22

---

23  
 24 <sup>27</sup> RHULE\_00006595, 00331926.

25 <sup>28</sup> RHULE\_00333586, 00333635.

26 <sup>29</sup> RHULE\_00325257.

27 <sup>30</sup> RHULE\_00003710.

28 <sup>31</sup> RHULE\_00000501,

<sup>32</sup> RHULE\_00326509, 00329015.

<sup>33</sup> RHULE\_00329249.

<sup>34</sup> RHULE\_00331627.RU

<sup>35</sup> RHULE\_00002969, 00326762, 00329680, 00338056, 00335200, 00337405.

1 Defendant could employ these same strategies to effectively evade arrest and access funds  
2 while fleeing prosecution.

3 **b. The Defendant Hides His Assets, Vehicles and Residence by Using Shell**  
4 **Corporations**

5 Not only has the Defendant attempted to conceal his identity by providing false  
6 information, he has also incorporated shell companies in order to further hide his assets and  
7 avoid association with marijuana manufacturing and distribution. The Defendant  
8 incorporated these entities, held in the names of family members, listing their principal  
9 places of business as addresses in Russia or domestic postal box locations.

10 For example, in March 2016, the Defendant incorporated Frontline LLC in Delaware  
11 using the registered agent Harvard Business Services.<sup>36</sup> Frontline LLC was used to purchase  
12 the property in Monroe where the Defendant manufactured marijuana products, along with a  
13 vehicle driven by the Defendant's wife.<sup>37</sup> By incorporating this entity, and using a registered  
14 agent service, the Defendant was able to avoid being publicly linked to the corporation.  
15 Instead, when one requests information from the State of Delaware related to this  
16 corporation, only the following information appears:

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 <sup>36</sup> RHULE\_00325257.

28 <sup>37</sup> RHULE\_00328593. As described above, on March 10, 2020, law enforcement located a number of USPS mailers containing marijuana products ready to be shipped inside this vehicle.

Entity Details			
<u>File Number:</u>	5988268	<u>Incorporation Date / Formation Date:</u>	3/14/2016 (mm/dd/yyyy)
<u>Entity Name:</u>	FRONTLINE LLC		
<u>Entity Kind:</u>	Limited Liability Company	<u>Entity Type:</u>	General
<u>Residency:</u>	Domestic	<u>State:</u>	State:
<u>Status:</u>	Good Standing	<u>Status Date:</u>	3/14/2016
<u>REGISTERED AGENT INFORMATION</u>			
<u>Name:</u>	HARVARD BUSINESS SERVICES, INC.		
<u>Address:</u>	16192 COASTAL HWY		
<u>City:</u>	LEWES	<u>County:</u>	Sussex
<u>State:</u>	DE	<u>Postal Code:</u>	19958
<u>Phone:</u>	302-645-7400		

Adding a further layer of anonymity, when incorporating this entity with Harvard Business Services, the Defendant designated his Russian father-in-law, V.G., as the company's "managing member."<sup>38</sup> Additionally, on the incorporation paperwork, the Defendant listed the principal place of business for Frontline LLC as Khabarovsk, Russia. The same managing member and business address were submitted to the IRS in order to obtain an EIN.

In February 2016, the Defendant also incorporated RKK Associates LLC in Delaware, again using the registered agent Harvard Business Services, Inc.<sup>39</sup> RKK Associates LLC was used to purchase the vehicles the Defendant and KENNETH WARREN RHULE drove,<sup>40</sup> including a van used to transport marijuana and marijuana products. As with Frontline LLC, this corporation is not publicly linked to the Defendant. In fact,

<sup>38</sup> Although the Defendant now states that he is the managing member of Frontline LLC, that document appended to the Defendant's motion is not publicly available and was not produced by Harvard Business Services in response to a subpoena. As a result, despite the Defendant's protestations to the contrary, that document does not effectively link Frontline LLC to the Defendant.

<sup>39</sup> RHULE\_00325257.

<sup>40</sup> On March 10, 2020, law enforcement located bulk marijuana and a cash counter inside this vehicle.



1 according to the State of Delaware, there is no registered agent currently assigned to this  
2 entity:

Entity Details			
<b>THIS IS NOT A STATEMENT OF GOOD STANDING</b>			
<u>File Number:</u>	5966611	<u>Incorporation Date / Formation Date:</u>	2/17/2016 (mm/dd/yyyy)
<u>Entity Name:</u>	RKK ASSOCIATES LLC		
<u>Entity Kind:</u>	Limited Liability Company	<u>Entity Type:</u>	General
<u>Residency:</u>	Domestic	<u>State:</u>	DELAWARE
<u>REGISTERED AGENT INFORMATION</u>			
<u>Name:</u>	UNASSIGNED AGENT		
<u>Address:</u>			
<u>City:</u>		<u>County:</u>	
<u>State:</u>	NullValue	<u>Postal Code:</u>	95050
<u>Phone:</u>			

15 Instead, the Defendant's wife—using her maiden rather than married name—is listed as the  
16 managing member for this corporation. Additionally, an address in Grandville, Michigan,  
17 associated with a mail forwarding business, is listed as RKK Associates LLC's principal  
18 place of business. This same managing member and business address were submitted to the  
19 IRS to obtain an EIN. Furthermore, as described above, when communicating with Harvard  
20 Business Services to incorporate this entity, the Defendant used the alias "John Kuhn."

21 These corporations were created to distance the Defendant from his marijuana  
22 operations, designed to avoid taxation and criminal enforcement. As the Defendant  
23 explained to KENNETH WARREN RHULE in February 2015: "The Delaware business  
24 needs to be something generic like R holdings llc," noting "[w]e don't want any tax filings  
25 with names that li[nk] to business markets ... We won't form a corporation under any of  
26 those names, we will have an unrelated corp trademark the rights to those names..."<sup>41</sup>

27  
28 <sup>41</sup> RHULE\_00338056 (ellipses in original). It is believed that the Defendant is referencing the trade names used to manufacture marijuana products, including HerbinArtisans, when discussing "names that li[nk] to business markets."

KENNETH WARREN RHULE responded “Yeah I figured it would be something like that. But we need to get an off shore corp going [first].”

**c. The Defendant Has Extensive Cryptocurrency Holdings and Financial Reserves**

The Defendant also has access to substantial assets, including those held in cryptocurrency, providing him with further means to flee. As alleged in the complaint, in order to record HerbinArtisans’ inventory, expenses, payroll, and sales, the Defendant used the cloud-based accounting software, Xero. The Defendant fastidiously maintained those accounting records, which law enforcement obtained pursuant to a search warrant. According to those records, between 2015 and 2020, HerbinArtisans made over \$13 million in income.

**Income Statement**

Herbin Artisans

For the year ended December 31, 2020

Account	2020	2019	2018	2017	2016	2015
<b>Income</b>						
Other Revenue	0.00	25,000.00	0.00	0.00	2,590.00	0.00
Sales	0.00	4,153,546.80	4,547,426.72	2,892,168.30	1,786,434.31	302,903.14
<b>Total Income</b>	<b>0.00</b>	<b>4,178,546.80</b>	<b>4,547,426.72</b>	<b>2,892,168.30</b>	<b>1,789,024.31</b>	<b>302,903.14</b>
<b>Cost of Goods Sold</b>						
Bad Debt	0.00	29,256.99	6,202.49	22,207.75	8,900.00	1,516.29
Cost of Goods Sold	0.00	3,372,737.85	2,651,187.26	1,654,389.70	910,337.59	138,036.62
<b>Total Cost of Goods Sold</b>	<b>0.00</b>	<b>3,401,994.84</b>	<b>2,657,389.75</b>	<b>1,676,597.45</b>	<b>919,237.59</b>	<b>139,552.91</b>
<b>Gross Profit</b>	<b>0.00</b>	<b>776,551.96</b>	<b>1,890,036.97</b>	<b>1,215,570.85</b>	<b>869,786.72</b>	<b>163,350.23</b>

Furthermore, those records show that HerbinArtisans held a substantial portion of its earnings in cryptocurrency, avoiding financial institutions that could report suspicious activity to law enforcement.<sup>42</sup>

While operating HerbinArtisans, the Defendant held accounts at numerous cryptocurrency exchanges and wallet providers. For example, the Defendant held accounts

<sup>42</sup> See, e.g., Exhibit 4 (under seal).

1 at Coinbase, Gemini, BitPay, CEX.IO, Bitfinex, Paxful, Bittrex, BitGo, BTC.com, Copay, X  
 2 Wallet, and LocalBitcoins.com.<sup>43</sup> As described above, the Defendant has opened multiple  
 3 accounts at these entities, using slightly different names, mailing addresses, or other  
 4 identifiers to avoid anti-money laundering internal controls. Using these accounts, the  
 5 Defendant converted a substantial amount of cryptocurrency into cash. For example,  
 6 between November 2015 and January 2017, the Defendant used his LocalBitcoins.com  
 7 account to sell over \$180,000 worth of Bitcoin to others in exchange for gift cards and  
 8 cash.<sup>44</sup> Additionally, from August 2017 through November 2018, the Defendant transferred  
 9 over \$80,000 to his BitPay card, using that card to make purchases and withdraw cash at  
 10 ATMs.<sup>45</sup>

11 Additionally, when law enforcement searched the Defendant's residence in Monroe,  
 12 Washington, they located multiple pieces of paper containing seed phrases—lists of  
 13 randomly generated words that can be used to access a cryptocurrency wallet. Using these  
 14 seed phrases, law enforcement seized more than 28 bitcoins, currently worth over \$300,000,  
 15 from the Defendant.<sup>46</sup> Law enforcement also seized multiple hardware wallets from the  
 16 Defendant's residence—electronic devices capable of storing cryptocurrency.

17 It's not surprising that the Defendant has such vast cryptocurrency reserves. As the  
 18 Defendant and KENNETH WARREN RHULE discussed in 2015, in order to profit from  
 19 their drug ventures they needed to find a way to spend their proceeds without detection. For  
 20 example, on April 29, 2015, the Defendant and KENNETH WARREN RHULE exchanged  
 21 the following text messages:<sup>47</sup>

22 Defendant: There is also a new service that will send you a credit card which is linked to  
 23 a Bitcoin wallet address and it will convert at market price and transact at any  
 24 location that accepts credit cards

---

25  
 26 <sup>43</sup> RHULE\_00002963, 00002973, 00003719, 00003638, 00328572, 00328582, 00329253, 00329258, 00334743,  
 00338048, 00341471.

27 <sup>44</sup> RHULE\_00338022.

28 <sup>45</sup> RHULE\_00325739.

<sup>46</sup> RHULE\_00333402.

<sup>47</sup> RHULE\_00338056.

1 KWR: Yeah I can. I'd like to do all of that using tails,<sup>48</sup> or a bit more anonymous  
2 than my PC

3 KWR: We need to do it ASAP

4 Defendant: That's the thing... Bitcoin can be 100% anonymous. If setup correctly ... Once  
5 a week we dump all excess profit into an offline wallet, but first run it  
6 through a wash service...<sup>49</sup>

7 Similarly, on October 29, 2015, KENNETH WARREN RHULE sent his father and an  
8 employee, C.E., the following email:<sup>50</sup>

---

27 <sup>48</sup> TAILS is a Tor based, portable operating system that increases a user's anonymity online.

28 <sup>49</sup> Ellipses in original.

<sup>50</sup> RHULE\_00254668.

## Credit cards

**From:** Kenneth Rhule <kenny@herbinartisans.com>  
**To:** Jon Kuhn <ken@herbinartisans.com>, C [REDACTED] E [REDACTED] [REDACTED]@herbinartisans.com>  
**Date:** Thu, 29 Oct 2015 18:55:02 -0700

### Secret spending.

We need to have a solution for online transactions, and local ones at that (credit card).... Bitcoin is the most anonymous currency available. Problem is spending it!

Bank accounts link socials or tax ID of the business. And we don't want to be reporting income. I am aware we are working on scheme for this, it seems that may take some time.

As it stands, there are a few bitcoin to credit/debit card services available. They do NOT ship to the US, but they do ship to the UK. We can sign up for a virtual mailbox out of the U.K., and have our debit card forwarded to a recipient in the US. We can use the cards here.... They legally can't be shipped here.

I'm not sure if that work around will "work". But we all need to get our wheels turning on this. Even if we incorporate in another country, we can get a bank there, and issue ourselves credit cards that can be used around the world.

In order to be successful we must all communicate and work on our goals together. We do not have enough time where we all collaborate. Even if for 15minutes a day.  
 Let get this company Rolling!

-Kenny

—  
 Sincerely,  
 Kenny Rhule  
 Cannabis Innovator  
 HerbinArtisans - Sweet Leaf Labs

Armed with substantial cryptocurrency reserves, the Defendant has the means to flee the jurisdiction and live comfortably for a substantial period of time while waiting for the evidence to grow stale. Although the Defendant is willing to offer his parents' and sibling's homes as collateral, the income earned by HerbinArtisans (over \$13.5 million), the Bitcoin converted by the Defendant through BitPay and LocalBitcoins (over \$260,000), and the Bitcoin seized from the Defendant's residence (over \$300,000), dwarf the collateral pledged by these third parties. With these financial assets, the Defendant could reimburse his family members for any losses incurred by his failure to appear.

**d. The Defendant Has the Ability to Hide his Activities Online by Using Encrypted Applications, Tor Browsers, and the Darkweb**

The Defendant has spent the last six years honing his skills to remain anonymous online, using Tor browsers, encrypted chat communications, and darkweb forums when selling marijuana products. The Defendant could use these same skills to remain anonymous during flight, evading law enforcement's efforts to track and arrest him.

For example, as alleged in the complaint, the Defendant used the darkweb to sell his marijuana products. When law enforcement searched the Defendant's bedroom on March 10, 2020, agents located a laptop open to a darkweb site advertising the sale of marijuana distillates.<sup>51</sup> This laptop was running the TAILS operating system, a Tor-based, portable operating system designed to protect a user's anonymity online. On this darkweb site, there were messages sent between the Defendant and his customers, including "Order was dropped yesterday (Mon) at Post office," and "is it same for chips, batter and diamonds, 4 oz per small priority box? I only like small priority boxes as they don't get much attention." Also open within the Tor browser was the website Bitcoinpostage.info, which the Defendant used to buy and print USPS shipping labels.

During the course of the conspiracy, the Defendant discussed using the darkweb with KENNETH WARREN RHULE via text message. For example, on April 25, 2015, the Defendant wrote "I wanted to show you the dark sites... I'll make you a bootable anonymous browser."<sup>52</sup> On May 16, 2015, the Defendant also wrote "Also, online deep web ... Setup a couple order takers... The proceeds go into a bitcoin account we control... They send in the orders each day, we ship them, and we pay out the commission when the Bitcoin escrow is released..."<sup>53</sup>

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<sup>51</sup> RHULE\_00340808.

<sup>52</sup> RHULE\_00338056.

<sup>53</sup> RHULE\_00338056 (ellipses in original).



1 The Defendant and his son also discussed the need to use encrypted chat  
 2 communications to avoid law enforcement surveillance. For example on October 30, 2015,  
 3 the Defendant texted KENNETH WARREN RHULE:<sup>54</sup>

4 We need to standardize on a secure sms and voice platform... Something that  
 5 allows communication between any of us... The government is storing all  
 6 communications, and working to be able to have 5 years of all  
 7 communications...it's unconstitutional, but a reality... It up to people to encrypt  
 communications in order to have privacy.

8 Thereafter, the Defendant started communicating using Signal and Wickr, encrypted  
 9 messaging services, to communicate with his son and the other employees at HerbinArtisans.  
 10 For example, on October 25, 2014, the Defendant texted KENNETH WARREN RHULE “. .  
 11 . I was wick[i]ng you about the extraction gear,” referring to marijuana processing  
 12 equipment. Additionally on October 28, 2014, when KENNETH WARREN RHULE texted  
 13 the Defendant “These guys are saying 5-7k for 100 lbs of sugar leaf trim but pickup is  
 14 Humboldt county,” the Defendant responded “Wick...”

15 Consistent with these messages, in order to avoid detection online, the Defendant  
 16 downloaded Tor browsers and encryption applications onto his personal devices.<sup>55</sup> For  
 17 example, according to Apple, the Defendant downloaded multiple applications to access the  
 18 darkweb, including several Onion browsers. The Defendant also downloaded numerous  
 19 applications designed to preserve anonymity, including VPNs, VOIP applications creating  
 20 burner numbers, PGP applications, and applications designed to alter one's voice on phone  
 21 calls. Finally, the Defendant downloaded multiple encrypted chat applications, including  
 22 Signal, Telegram, WhatsApp, and Wickr.

23  
 24  
 25  
 26  
 27  
 28 <sup>54</sup> RHULE\_00338056 (ellipses in original).

<sup>55</sup> RHULE\_00341471.

**e. The Defendant has a History of Failure to Comply, Obstruction, and Tax Avoidance**

Although the Defendant claims he will abide by the terms of a bond, his history of failing to follow the law and comply with the directives of law enforcement undermine that assertion. The Defendant has a prior conviction for obstruction of justice,<sup>56</sup> another citation for failure to comply, and has an outstanding tax dispute with the IRS. Additionally, before he was charged in the present case, he was sent a cease and desist order by Snohomish County to stop processing marijuana at the Monroe property, which he fully ignored. On October 11, 2017, a Snohomish County Planning and Development Services Code Enforcement Officer sent the Defendant a letter stating:

I am investigating an alleged violation regarding the property [located in Monroe]. The alleged violation involves allowing marijuana processing to take place in an area not zoned for such activity.<sup>57</sup>

Despite receiving this notice, the Defendant continued to process marijuana on the property until it was searched by law enforcement in March 2020. In short, the Defendant has repeatedly demonstrated an unwillingness to comply with the law and follow the directives of law enforcement—there is no reason to believe that he will now become compliant and abide by conditions of release.

**f. The Defendant is a Private Pilot with Access to Airplanes**

The Defendant is also a licensed pilot, having obtained his student pilot's license from the FAA in January 2019.<sup>58</sup> As a student pilot, the Defendant is licensed to fly alone,<sup>59</sup> and

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<sup>56</sup> In February 2009, the Defendant was convicted, after trial, of Obstructing a Law Enforcement Officer, in violation of RCW 9A.76.020(1). In that case, the State alleged that the Defendant and his friend, both intoxicated, were erratically driving a black Ferrari at a high rate of speed across the 520 bridge. After officers stopped the vehicle, they arrested the driver for driving while intoxicated. The Defendant, a passenger in the vehicle, also appeared to be intoxicated, and was later determined to have a blood alcohol level of .123 or .124. After his friend was arrested, the Defendant became belligerent, shouting obscenities at the officers. When officers informed the Defendant that the Ferrari would be towed, the Defendant became confrontational, jumping in the car and driving it away (despite his intoxication). Thereafter, officers pursued the vehicle, stopped it, and the Defendant was arrested. Attached as Exhibit 5 (under seal).

<sup>57</sup> RHULE\_00331417.

<sup>58</sup> RHULE\_00331644.

<sup>59</sup> [https://www.faa.gov/pilots/become/student\\_cert/](https://www.faa.gov/pilots/become/student_cert/)

1 the Defendant completed his first solo flight on May 7, 2019.<sup>60</sup> Since that date, the  
 2 Defendant has completed other solo flights and has logged dozens of flight hours.<sup>61</sup>  
 3 Although law enforcement seized the Defendant's plane, and the Defendant claims his other  
 4 aircraft is inoperable, the Defendant still has access to airplanes. For example, the Defendant  
 5 could rent an aircraft, as he has done in the past, or purchase a new aircraft. Even if the  
 6 Defendant is unable to access the airplanes registered to Frontline Aviators LLC, he still  
 7 remains capable of chartering planes. The Defendant's ability to fly private aircraft would  
 8 certainly be an asset should he decide to flee the jurisdiction.

9 For all of the reasons outlined above—the Defendant's ability to use false identifiers  
 10 to evade law enforcement detection, his incorporation of shell companies, his access to  
 11 cryptocurrency reserves, his experience using encrypted and anonymous communication  
 12 mechanisms, his ability to pilot an aircraft, combined with his historic failure to abide by law  
 13 enforcement directives—the Defendant has proven that he possesses the resources and skills  
 14 necessary to evade arrest as a fugitive.

### 15 **C. The Defendant Also Poses a Danger to the Community**

16 In addition to posing a substantial risk of flight, the Defendant also poses a danger to  
 17 the community. On March 10, 2020, when law enforcement searched the Defendant's  
 18 residence and property, they found not only an arsenal of weapons—including two stolen  
 19 firearms—they also found that the Defendant was using highly combustible fuels to extract  
 20 his marijuana products, fuels that have historically caused explosions and injury in other  
 21 illegal processing facilities.

#### 22 **a. The Defendant Possessed Multiple Firearms, Including Two Stolen** 23 **Weapons**

24 When law enforcement searched the Defendant's residence on March 10, 2020, they  
 25 located an arsenal of weapons, including two stolen firearms.<sup>62</sup> Under the Defendant's bed,

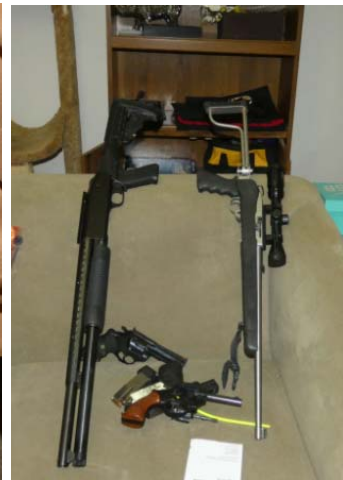
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27 <sup>60</sup> RHULE\_00331628.

28 <sup>61</sup> RHULE\_00331632, 00331645.

<sup>62</sup> RHULE\_00329890, 00331840-41, 00331880-81, 00331899.

1 agents located a Colt pistol, which had been reported stolen. In the Defendant's living room,  
2 agents found an assault rifle. In the Defendant's office, agents located multiple rifles and  
3 revolvers, including in a gun safe filled with firearms. One of these rifles, which was loaded,  
4 had also been reported as stolen. Outside of the residence, near the laboratory, agents found  
5 three additional assault rifles. In short, the Defendant's property was heavily fortified,  
6 including with stolen weapons, to protect the marijuana products and cryptocurrency  
7 reserves held within.



**b. Explosive Nature of Marijuana Extraction**

Additionally, the methods used by the Defendant to extract and distill marijuana are heavily regulated for a reason—if done improperly, they can lead to explosions and fires. As reported by one media outlet, as of 2019, at least ten marijuana processing laboratories have exploded, causing severe burns, extensive fires, and occasional deaths.<sup>63</sup> In order to distill marijuana products, processors use highly combustible butane and propane, along with dry ice and carbon dioxide tanks. On March 10, 2020, when law enforcement searched the Defendant's laboratory they found these chemicals, along with an employee who told them that he had just completed a particularly dangerous portion of the extraction run that could have resulted in injury or explosion if performed improperly.<sup>64</sup>

Just last month, a similar marijuana lab exploded in Centralia, Washington, causing one employee to suffer extensive burns and nearly resulting in a brushfire.<sup>65</sup> In 2013, a defendant who caused an explosion at an apartment complex in Bellevue, Washington, resulting in injuries and a death, was sentenced in the Western District of Washington to nine years in prison.<sup>66</sup> As a result, in order to protect the community, licensed marijuana extractors are inspected and are required to operate in buildings built to withstand explosion. The Defendant's laboratory had neither been inspected nor was it specially configured to withstand an explosion. It also lacked necessary safety protocols to prevent employees from suffering life-altering burns.

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<sup>63</sup> *New problem for legal weed: Exploding pot factories*, Politico (February 18, 2019), available at <https://www.politico.com/story/2019/02/18/marijuana-factories-explosions-safety-issues-1155850>; *Exploding danger: U.S. marijuana oil labs pose deadly, destructive hazard*, Reuters (June 4, 2019), available at <https://www.reuters.com/article/us-usa-drugs-insight/exploding-danger-u-s-marijuana-oil-labs-pose-deadly-destructive-hazard-idUSKCN1T51F4>

<sup>64</sup> RHULE\_00329701.

<sup>65</sup> *Fire, explosion at Centralia pot processing plant injures employee*, King 5 (August 12, 2020), available at <https://www.king5.com/article/news/local/pot-explosion-severe-burn-centralia-cbd/281-12f7d6d4-d190-4569-b356-3ab29e2f7fe0>

<sup>66</sup> *Former Bellevue Resident Whose Drug Manufacturing Sparked Explosion and Fire Sentenced to Nine Years in Prison*, Department of Justice (June 8, 2015), available at <https://www.justice.gov/usao-wdwa/pr/former-bellevue-resident-whose-drug-manufacturing-sparked-explosion-and-fire-sentenced>



1        Given the risk of explosion for the workers employed by the Defendant and the  
 2 Defendant's immediate neighbors, along with the number of stolen and registered firearms  
 3 located at the Monroe property, the Defendant also appears to pose a safety risk to the  
 4 community if released.

5        **D. The Cases Cited by the Defendant Do Not Mandate Release**

6        The Defendant cites a myriad of cases, claiming that the offenses charged in those  
 7 cases are comparatively more dangerous than that committed by the Defendant. But the  
 8 United States has never argued that the Defendant must be detained solely because of the  
 9 threat he poses to the community. Rather, the flight risk posed by the Defendant, evidenced  
 10 by his express plan to flee to Russia, remains the primary force compelling detention in this  
 11 case. As described herein, the Defendant took concerted efforts to flee—preparing for his  
 12 imminent trip to Russia, applying for an expedited passport, evaluating obtaining a visa to  
 13 travel to Russia, conferring with his wife regarding his intentions to meet her in Russia—all  
 14 days after being informed that he was a target of law enforcement's investigation. Even the  
 15 Defendant's co-defendant, KENNETH WARREN RHULE, does not have the same motives  
 16 to flee—his partner is not from Russia and she is not being removed from the United  
 17 States.<sup>67</sup> After evaluating the unique circumstances faced by the Defendant, circumstances  
 18 that are rare amongst those who appear before this Court, Magistrate Judge Tsuchida  
 19 correctly determined that the Defendant failed to rebut the presumption of detention.

20        The fact that the Defendant has been charged with manufacturing and distributing  
 21 marijuana, legal under Washington law if licensed, does not alter this conclusion. In a  
 22 comparable case, *United States v. Xiamin Huang*, CR18-124 JCC (October 16, 2018), Dkt.  
 23 86, this Court upheld Magistrate Judge Donohue's order detaining an individual charged  
 24 with the same offense as the Defendant—Conspiracy to Manufacture and Distribute  
 25  
 26

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27 <sup>67</sup> Notably, the Magistrate Judge Peterson's opinion, appended to the Defendant's motion, was issued when KENNETH  
 28 WARREN RHULE was only charged with violating 21 U.S.C. § 841(b)(1)(B), and as such no presumption of detention  
 applied.



1 Marijuana. Xiamen Huang was a U.S. citizen, originally born in China,<sup>68</sup> who purchased  
 2 residential properties in order to grow marijuana. In this Court's order, it found Huang to be  
 3 a flight risk based on her access to financial resources, family connections to China, lack of  
 4 meaningful employment in Washington, and the pending ten year mandatory minimum  
 5 charge. In comparison, the Defendant has the same, if not worse, risk factors. For one, the  
 6 Defendant's financial resources far surpass that earned by Huang whose assets were  
 7 predominately tied up in real estate and amounted to less than \$600,000. The Defendant's  
 8 foreign connections are also comparable to Huang's, now that the Defendant's wife of nearly  
 9 twenty years is returning to Russia and can help him acclimate and obtain lawful status. In  
 10 comparison, Huang was a U.S. citizen whose children, siblings, and parents each resided in  
 11 the United States. At the time she was detained, Huang had lived in Washington for  
 12 seventeen years. Like Huang, the Defendant has no meaningful employment in Washington,  
 13 given that he has been employed as a marijuana producer for the past six years with no other  
 14 source of income. And, like Huang, law enforcement found substantial amounts of  
 15 marijuana at the Defendant's home, for which he is facing a substantial mandatory minimum  
 16 sentence. In ordering Huang detained, the Court noted that, upon conviction, she would face  
 17 a lengthy separation from her children, giving her further incentive to flee. This is  
 18 comparable to the Defendant's incentive to avoid separating from his wife of nineteen years.  
 19 If anything, Xiamin Huang posed less of a flight risk, as she did not have the Defendant's  
 20 technological skills enabling her to remain anonymous, using her own name when opening  
 21 bank accounts, purchasing her residence, and laundering her drug proceeds.

22 Additionally, the Defendant's proposed release plan does not compel a different  
 23 result, as it neither addresses his motive to flee nor the danger the Defendant poses to the  
 24 community. The Defendant requests to be released from prison, returned to his home where  
 25 his co-defendant, KENNETH WARREN RHULE, and the Defendant's wife are residing.  
 26 He requests to be returned to the same property where the Defendant and KENNETH  
 27 \_\_\_\_\_

28 <sup>68</sup> Huang had renounced her Chinese citizenship and no longer possessed a Chinese passport.

1 WARREN RHULE manufactured and distributed marijuana, in a remote portion of Monroe,  
2 Washington. The risks inherent in allowing co-defendants to reside together, in remote  
3 locales, once used to commit the charged offenses, are apparent. These risks are further  
4 heightened by the strain that COVID-19 has placed on our Probation Office, reducing its  
5 ability to effectively monitor defendants and conduct regular home visits. Additionally, as  
6 the Court knows, ankle monitors can be tampered with and removed, ultimately providing  
7 law enforcement with only moments' notice to apprehend suspects intent on fleeing. In  
8 short, if the Defendant is determined to flee, an ankle monitor is unlikely to stop him.

9 The only remaining argument the Defendant advances for release concerns the current  
10 pandemic. The government does not take the risk posed to prisoners during the COVID-19  
11 outbreak lightly. It was because of this risk that the government devised a strategy to escort  
12 the Defendant on a commercial flight, rather than having transported through multiple  
13 institutions facing COVID-19 outbreaks. But the risk at FDC SeaTac, while worthy of  
14 concern, remains manageable. Although 31 inmates have now tested positive at the facility,  
15 16 of those inmates were new arrests in segregated detention cells. The remaining 15  
16 inmates were, unfortunately, located in the general population. However, given that the FDC  
17 SeaTac houses 618 inmates, this represents a 2.5% infection rate, which is lower than King  
18 County. The Bureau of Prisons is taking aggressive steps to quell any further spread,  
19 isolating inmates and placing units on lockdown in order to avoid additional infections.  
20 Furthermore, the Defendant is not a high-risk inmate, as he is comparatively young (45) and,  
21 according to his PSR, suffers from intermittent asthma that is controlled by albuterol—a non-  
22 steroidal inhaler—and Claritin. In light of the Defendant's substantial flight risk, and danger  
23 to the community, the Defendant should be detained despite the current health climate.

1 **V. CONCLUSION**

2 In light of the pending charges, there is a presumption of detention in this case. The  
 3 Defendant has failed to rebut that presumption, posing both a risk of flight and a danger to  
 4 the community. The Defendant's compelling motivation to flee—to avoid a lengthy prison  
 5 sentence and separation from his spouse—coupled with his proven ability to evade law  
 6 enforcement detection require that the Defendant be detained pending trial.

7  
 8 DATED this 1<sup>st</sup> day of September, 2020.

9  
 10 Respectfully Submitted,

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